



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO AQUA VIRGINIA, INC. FOR LAKE HOLIDAY WWTP VPDES Permit No. VA0027642

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Aqua Virginia, Inc. regarding the Lake Holiday WWTP for the purpose of resolving certain violations of the State Water Control Law, Regulations, and the applicable Permit.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aqua" means Aqua Virginia, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Aqua is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "Plant" means the Lake Holiday WWTF located at 231 South Lakeview Drive, in Cross Junction, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents of the Lake Holiday community, as operated by Aqua Virginia, Inc.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "O&M" means operations and maintenance.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" means VPDES Permit No. VA0027642, which was issued under the State Water Control Law and the Regulation to Aqua on September 1, 2018 and which expires on August 31, 2023.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful

or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Aqua owns and operates the Plant. Aqua is subject to the Permit No. VA0027642 issued on September 1, 2018, expiring on August 31, 2023. The February 2018 through August 31, 2018 effluent violations were subject to the previous permit, issued to Aqua on September 1, 2013, and expired on August 31, 2018. The Facility has a design average flow capacity of 0.24 million gallons per day (MGD). The Permit allows Aqua to discharge treated sewage wastewater from the Plant, to the unnamed tributary to Isaacs Creek in compliance with the terms and conditions of the Permit.
2. The unnamed tributary to Isaacs Creek is located in the Shenandoah River subbasin and the Potomac River Basin.
3. Aqua has reported to DEQ a total of 20 unauthorized discharges to state waters, occurring on the following dates: February 7, 2018; April 16, 2018; April 17, 2018; May 16, 2018; May 17, 2018; May 19, 2018; June 3, 2018; July 12, 2018; July 19, 2018; July 25, 2018;

September 9, 2018; and September 27, 2018. DEQ received a letter of explanation regarding each reported event. The discharges are detailed below:

- a. On February 8, 2018, Aqua staff reported an unauthorized discharge to state waters which occurred on February 7, 2018. On February 9, 2018, the DEQ-Valley Regional Office received a letter of explanation reporting that approximately 500 gallons of untreated wastewater discharged to state waters.
- b. On April 16, 2018, Aqua staff reported an unauthorized discharge to state waters which occurred on April 16, 2018. On April 20, 2018, the DEQ-Valley Regional Office received a letter of explanation reporting that approximately 1,350 gallons of untreated wastewater discharged to state waters.
- c. On May 16, 2018, Aqua staff reported two unauthorized discharges to state waters which occurred on May 16, 2018. On May 18, 2018, the DEQ-Valley Regional Office received a letter of explanation reporting that approximately 900 gallons of untreated wastewater discharged to state waters.
- d. On May 18, 2018, Aqua staff reported four unauthorized discharge to state waters which occurred on May 17, 2018. On May 21, 2018, the DEQ-Valley Regional Office received a letter of explanation reporting that approximately 305,000 gallons of untreated wastewater discharged to state waters.
- e. On May 20, 2018, Aqua staff reported an unauthorized discharges to state water which occurred on May 19, 2018. On May 21, 2018, the DEQ-Valley Regional Office received a letter of explanation reporting that approximately 20,700 gallons of untreated wastewater discharged to state waters.
- f. On June 4, 2018, Aqua staff reported four unauthorized discharges to state waters which occurred on June 3, 2018. On June 7, 2018, the DEQ-Valley Regional Office received a letter of explanation stating that approximately 50,000 gallons of untreated wastewater discharged to state waters.
- g. On July 13, 2018, Aqua staff reported an unauthorized discharge to state waters which occurred on July 12, 2018. On July 16, 2018, the DEQ-Valley Regional Office received a letter of explanation reporting that approximately 500 gallons of untreated wastewater discharged to state waters.
- h. On July 20, 2018, Aqua staff reported two unauthorized discharges to state waters which occurred on July 19, 2018. On July 23, 2018, the DEQ-Valley Regional Office received a letter of explanation reporting that approximately 500 gallons of untreated wastewater discharged to state waters.
- i. On July 26, 2018, Aqua staff reported an unauthorized discharge to state waters which occurred on July 25, 2018. On July 27, 2018, the DEQ-Valley Regional

Office received a letter of explanation reporting that approximately 500 gallons of untreated wastewater discharged to state waters.

- j. On September 10, 2018, Aqua staff reported two unauthorized discharges to state waters which occurred on September 9, 2018. On September 13, 2018, the DEQ-Valley Regional Office received a letter of explanation reporting that approximately 17,290 gallons of untreated wastewater discharged to state waters.
 - k. On September 28, 2018, Aqua staff reported an unauthorized discharge to state waters which occurred on September 27, 2018. On October 1, 2018, the DEQ-Valley Regional Office received a letter of explanation reporting that approximately 2,850 gallons of untreated wastewater discharged to state waters.
4. DEQ received the DMRs from Aqua for the Facility, for the monitoring periods from June 1 – June 30, 2018 and from July 1 – July 31, 2018, that included the following data results:

Month	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement	No. Ex.
June 2018	001	353-Ammonia as N Jun-Dec	Concentration Maximum	6.2 mg/L	3.4 mg/L	1
June 2018	001	007-DO	Concentration Minimum	3.8 mg/L	5.2 mg/L	1
July 2018	001	353-Ammonia as N Jun-Dec	Concentration Maximum	10.0 mg/L	3.4 mg/L	1
July 2018	001	353-Ammonia as N Jun-Dec	Concentration Average	2.79 mg/L	2.5 mg/L	0

- 5. On December 7, 2018, DEQ issued NOV No. W2018-12-V-0001 to Aqua for exceedances of Permit effluent discharge limitations and for unauthorized discharges to state waters.
- 6. Va. Code § 62.1-44.5 states that: “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses...”
- 7. Permit Part I.A.1 prohibits discharges that exceed discharge limitations.
- 8. Permit Part II.F states that: “Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.”

9. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
11. On January 11, 2019, DEQ staff met with Aqua representatives to discuss the NOV. Aqua submitted documentation at the meeting, detailing the Inflow and Infiltration (I&I) measures implemented at the Facility. Aqua hired a third party to evaluate the collection system at the Facility, and followed the recommendations proposed. Aqua performed extensive maintenance of the system beginning in May 2018, which included rehabilitation of 28 manholes. Additionally, Aqua has proactively implemented an I&I program at the Facility, increasing the frequency of maintenance, the application of funding to investigate areas of overflows, and proposed to incorporate operating strategies under wet weather conditions in the O&M manual at the Facility.
12. On February 11, 2019, Aqua submitted to DEQ, a schedule of proposed 2019 projects to be incorporated into the Appendix of this Consent Order.
13. The Department has issued no permits or certificates to discharge wastewater at the Facility to Aqua other than VPDES Permit No. VA0027642.
14. The unnamed tributary to Isaacs Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
15. Based on the results of the January 11, 2019 meeting, the documentation submitted on February 9, 2018, April 20, 2018, May 18, 2018, May 21, 2018, June 7, 2018, July 16, 2018, July 23, 2018, July 26, 2018, September 13, 2018, October 1, 2018, and the June and July 2018 DMRs, the Board concludes that Aqua has violated Va. Code § 62.1-44.15, 9 VAC 25-31-50, Permit Part II.F, and Permit Part I.A.1, by discharging sewage and wastewater from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(10) above.
16. In order for Aqua to complete its return to compliance, DEQ staff and representatives of Aqua have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Aqua and Aqua agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$18,375 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Aqua shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Aqua shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Aqua for good cause shown by Aqua or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2018-12-V-001 dated December 7, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Aqua admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Aqua consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Aqua declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Aqua to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Aqua shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Aqua shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Aqua shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Aqua. Nevertheless, Aqua agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. the Director or his designee terminates the Order after Aqua has completed all of the requirements of the Order;
- b. Aqua petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Aqua.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Aqua from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

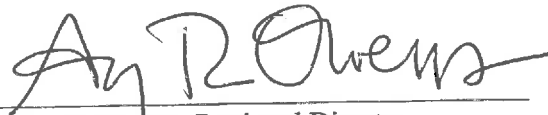
12. Any plans, reports, schedules or specifications attached hereto or submitted by Aqua and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Aqua certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Aqua to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Aqua.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Aqua voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of June, 2019.



Amy T. Owens, Regional Director
Department of Environmental Quality

Aqua Virginia, Inc. voluntarily agrees to the issuance of this Order.

Date: 4/24/19 By: [Signature] PRESIDENT
(Person) (Title)
Aqua Virginia, Inc.

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 24th day of April, 2019, by John G. Aulbach II who is President of Aqua Virginia, Inc. on behalf of the corporation.

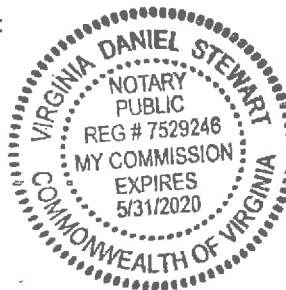
[Signature]
Notary Public

7529246

Registration No.

My commission expires: May 31, 2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. **Effluent Sample Type**

The sample type for monitoring CBOD₅ (Jan-May), CBOD₅ (Jun-Dec), Total Suspended Solids, Ammonia-N (Jan-May), Ammonia-N (Jun-Dec), and Total Hardness as specified in Part I.A of the Permit shall be 24-Hour Composite.

2. **I&I Work Plan**

Within 30 days of the effective date of this Order, Aqua shall submit a detailed plan and schedule for I&I reduction projects at the Facility for the 2019 and 2020 calendar years. Upon approval, the plan will be incorporated with this Order and enforceable.

3. **Reporting**

Aqua shall submit quarterly progress reports to DEQ, with the first report being due **July 10, 2019**. Subsequent progress reports will be every **October 10, January 10, April 10, and July 10** until the cancellation of this Order. The quarterly progress reports shall contain:

- a. a summary of all work completed since the previous progress report in accordance with this Order;
- b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
- c. a statement regarding any anticipated problems in complying with this Order.

4. **DEQ Contact**

Unless otherwise specified in this Order, Aqua shall submit all requirements of Appendix A of this Order to:

Tiffany R. Severs
Enforcement Team Leader
DEQ Valley Regional Office
Mailing: PO Box 3000, Harrisonburg, Virginia 22801
Location: 4411 Early Road, Harrisonburg, Virginia
540-574-7859
540-574-7878
tiffany.severs@deq.virginia.gov